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Attorney for Plaintiff

SAMUEL KIDSTAR

Plaintiff,

v.

**FACEBOOK, INC. AND MARK
ZUCKERBERG**

Defendants.

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
DOCKET NO. HUD -L- _____-18

Civil Action

**COMPLAINT, JURY DEMAND,
REQUEST FOR DOCUMENTS,
CERTIFICATION PURSUANT TO
R.4:5-1; NOTIFICATION OF
CONSUMER FRAUD VIOLATION**

Plaintiff, SAMUEL KIDSTAR, (hereafter "Plaintiff"), residing at 1509 6TH Street, North Bergen, in the State of New Jersey, by way of Complaint against the Defendants herein says:

1. Plaintiff is an individual who resides at the above address. Plaintiff is a Published Author and Union ironworker; Local 27 chapter. He was a First Responder to the 9/11 Tragedy in 2001 in New York City, along with his Local 27 chapter of ironworkers.
2. Plaintiff opened a Facebook account in 2004 to which he uploaded data, including thousands of photographs, including historical photographs of him during his response at 9/11 Ground Zero.
3. In or about September 2016, an error of Defendants caused his Facebook Page to be disabled. Despite their numerous attempts to correct their error and locate his data, to date, it has not been fully recovered, causing him damages as further described below.

All of his 9/11 historical photos of him, responding in emergency at Ground Zero, remain lost.

4. Plaintiff had planned to write a book regarding his 9/11 experience, one that would include his photographs as a primary focus of interest. Plaintiff did, in fact, publish his book in 2018, but due to the loss of photos, was forced to change the content of the book and publish it without the photos, negatively impacting its marketability.
5. Defendants, FACEBOOK, INC. has its principal place of business at 1 Hacker Way in Menlo Park California and do business all over the world.
6. MARK ZUCKERBERG is the CEO of FACEBOOK, INC. and has control over its operations.
7. ABC 1-100, are fictitiously named individuals, corporations or companies responsible for the safety and/or technical management of the data on the Facebook, Inc. servers.
8. Defendants, FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100, shall be collectively referred to as "Defendant" or "Defendants."
9. Upon information and belief, Defendants do not have a New Jersey address however, Defendants, do business in New Jersey, and did business with Plaintiff, in New Jersey.

FIRST COUNT

10. DEFENDANTS FACEBOOK, INC. and MARK ZUCKERBERG wrote, promised, represented, represented to its consumers that their FACEBOOK platform is a safe community for consumers.
11. Defendants made said statements negligently and/or wilfully and/or fraudulently with intent to induce its consumers, including Plaintiff, into utilizing its services and uploading their personal data.

12. Said actions constitute bad faith. Defendants knew the data was not safe and to date, have not recovered and delivered the lost data.
13. Defendants are liable for breach of contract, breach of the implied covenant of good faith and fair dealing, fraudulent inducement, negligent misrepresentation, and fraud and as such, owe the Plaintiff(s) damages.

WHEREFORE, Plaintiffs demand judgment, jointly and severally, against FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100, for:

- (a) compensatory damages;
- (b) punitive damages;
- (c) interest and costs;
- (d) attorney's fees;
- (e) such other relief as the Court may deem equitable and just.

SECOND COUNT

BREACH OF CONTRACT

Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.

14. Upon information and belief, at all times hereinafter relevant, Defendants FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100, at all times mentioned in this Complaint are, engaged in the business of providing consumer goods and services which includes, but is not limited to computerized and mobile app services

providing a platform for the exchange and viewing of data, goods, and services.

15. In 2004 Plaintiff and Defendants entered into an agreement upon the opening of Plaintiffs account.
16. Defendants agreed to provide a safe space for plaintiff's personal data.
17. Plaintiff's data was lost by Defendants while in Defendant's care.
18. Plaintiff's data to date has not been returned.
19. Said failure of defendants to keep Plaintiff's data safe constitutes a breach of contract between the Plaintiff and FACEBOOK, INC. and MARK ZUCKERBERG AND ABC 1-100.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG AND ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

THIRD COUNT

FRAUD AND MISREPRESENTATION

20. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
21. As an inducement for Plaintiff to conduct business with FACEBOOK, INC. and MARK

ZUCKERBERG and ABC 1-100 at the time of the entering the agreement, the Defendants, promoted themselves and held themselves out to be able to provide a safe space for its consumer's data, including Plaintiff's.

22. Defendants represented that Plaintiff would receive his own Account through which his information would remain safe and accessible by him.
23. These statements and the conduct on the part of Defendants relating to providing a safe space for Plaintiff's data, convinced Plaintiff that the Defendants intended to perform as anticipated. However, Defendants in making these statements and in so conducting themselves, were guilty of fraud in that they did not have a safe space for Plaintiff's data.
24. Defendants also knew that third-party access was given to Facebook server data. Plaintiff trusted that Defendants would take the steps necessary to keep his data safe.
25. Defendants falsely, with intent to defraud the Plaintiff and induce Plaintiff's reliance, represented they would keep Plaintiff's data safe.
26. These material representations were false, and known to be false by the Defendants at the time they were made.
27. Plaintiff was ignorant of the falsity of the representations, and was induced to enter into an agreement with defendants, to upload his data to defendant's platform.
28. In reasonable reliance on said representations by defendants aforementioned, Plaintiff entered into an agreement for the aforesaid service with defendants and uploaded his personal data to their platform and did so to his detriment.
29. Defendants did not keep his data safe as they promised they would, and in fact, lost his data.

30. Plaintiff demanded that defendants recover his photos and lost data. Over a period of time in 2017 through present, several attempts have been made to recover data. Plaintiff has complied with Facebook representatives requests to open “recovery emails” and their demands to “verify his identity by uploading his driver’s license and/or passport” and he did so reluctantly, given their prior safety problems. To date, the data has not been returned to him.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) punitive damages;
- (c) interest and costs;
- (d) attorney’s fees;
- (e) such other relief as the Court may deem equitable and just.

FOURTH COUNT

CONSUMER FRAUD ACT

31. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
32. Plaintiff is a natural person, and is considered a “person” in accordance with N.J.S.A. 56:8-1.
33. Defendants, FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 (hereafter “Defendants”), either business entities or individuals are each considered a

“person” in accordance with N.J.S.A. 56:8-2(D).

34. The representation that Defendants would keep Plaintiff's data safe was false and/or misleading, and all Defendants, knew that same were false and/or misleading.
35. Plaintiff charges that the Defendants, used or employed an unconscionable commercial practice, deception, fraud, false pretenses, false promise, misrepresentation or knowing concealment, suppression or omission of material facts with the intent that Plaintiff would rely upon such deceptions, fraud, false pretenses, false promise, misrepresentation or knowing concealment.
36. As such, Defendants, have violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-19.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) punitive damages;
- (c) treble damages;
- (d) interest and costs;
- (e) attorney's fees;
- (f) such other relief as the Court may deem equitable and just.

FIFTH COUNT

**BREACH OF IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

37. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
38. Defendants' actions with respect to its agreement with Plaintiff for the safety of Plaintiff's data was subject to the implied covenant of good faith and fair dealing.
39. Defendants acting with respect to its agreement to keep Plaintiff's data safe were subject to the implied covenant of good faith and fair dealing.
40. Defendants represented that they would provide a safe space for Plaintiff's personal data and did not, and did lose Plaintiff's data.
41. Defendants had a duty to perform in a good and workman like manner.
42. Defendants had a duty to exercise due care in the performance of their work.
43. Defendants breached this covenant to Plaintiff's detriment.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

SIXTH COUNT

PROMISSORY ESTOPPEL

44. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
45. Defendants promised, represented, and agreed to provide a safe place for Plaintiff's data in a good, fair and reasonable manner.
46. In reasonable reliance of said agreements, representations and promises, Plaintiff entrusted the data to Defendants.
47. Said reliance was to the Plaintiff's detriment in that Defendants lost his data.
48. Therefore, Defendants are estopped from not recovering the lost data.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

SEVENTH COUNT

FRAUDULENT INDUCEMENT

49. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
50. Defendants represented to the Plaintiff that they would provide a safe space for Plaintiff's data.

51. Defendants represented that Plaintiff would receive the benefit of their security.
52. Defendants represented that Plaintiff would receive his own account where he would be able to access his data using a password.
53. From the inception of the relationship, the Defendants had no intention of providing a safe space for plaintiff's data, and/or knew the limits and/or vulnerabilities of its products, but rather tricked Plaintiff into entering into an agreement with Defendants to trust them with his data.
54. Such action constitutes a fraudulent inducement.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) punitive damages;
- (c) interest and costs;
- (d) attorney's fees;
- (e) such other relief as the Court may deem equitable and just.

EIGHTH COUNT

NEGLIGENT REPRESENTATION

55. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
56. Defendants represented to the Plaintiff that his data would be safe and password protected and that he would be able to access his data.

57. Defendants have a duty to insure that its representations were accurate.
58. Defendants breached this duty as their representations were not accurate.
59. As a proximate cause of Defendants' breach, Plaintiff was damaged.
60. Plaintiff did not contribute to Defendants' breach or to Plaintiff's damage in any manner.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

NINTH COUNT

NEGLIGENCE

61. Plaintiff repeats and reiterates all paragraphs, allegations and counts of this complaint as if set forth herein at length.
62. Defendants had a duty to provide services in a good, fair, just, timely manner, and complete the services they represented, promised, and agreed to complete.
63. Defendants had a duty to keep plaintiff's data safe and accessible to him.
64. Defendants breached this duty by not performing their services in a good, fair, just or timely manner, by losing Plaintiff's data.
65. Said breach proximately caused Plaintiff's damages.
66. Plaintiff did not contribute to Defendants' breach or to Plaintiff's damage in any manner.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

TENTH COUNT

PUNITIVE DAMAGES ACT

- 67. Plaintiff repeats and reasserts the allegations in the Complaint as if set forth at length herein.
- 68. Defendants' actions were wilful and/or wanton and/or reckless and/or with wilful disregard, and caused injury to Plaintiff.
- 69. Defendants should be punished in order to: deter Defendants from ever taking similar conduct again and/or discourage similar conduct or actions by others in the future.
- 70. Defendants should be punished as their actions were deliberate with knowledge that there was a high degree of probability of harm to Plaintiff.
- 71. Defendants should be punished as their omission of the truth or facts was deliberate with knowledge that there was a high degree of probability of harm to Plaintiff.
- 72. Defendants should be punished due to their reckless indifference to the consequences of their actions caused injury to Plaintiff.
- 73. As a result Defendants' actions Plaintiff was injured and damaged.
- 74. Defendants should be responsible for Punitive Damages.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

ELEVENTH COUNT

**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS/ INTENTIONAL
INFLICTION OF EMOTIONAL DISTRESS**

- 75. Plaintiff repeats and reiterates all counts of Plaintiff's Complaint as if set forth at length herein.
- 76. Defendants intentional actions and/or statements and/or representations and/or promises were outrageous and egregious.
- 77. Defendants negligent actions and/or statements and/or representations and/or promises were outrageous and egregious.
- 78. As a result of Defendants intentional or negligent actions and/or statements and/or representations and/or promises were outrageous and egregious, Plaintiff suffered emotional distress and was injured and damaged.
- 79. Plaintiff had incurred emotional distress as a result of Defendants actions.

WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) interest and costs;
- (c) attorney's fees;
- (d) such other relief as the Court may deem equitable and just.

TWELVTH COUNT

BREACH OF FIDUCIARY DUTY

- 80. Plaintiff repeats and reiterates all counts of Plaintiff's Complaint as if set forth at length herein.
- 81. Defendants are entrusted by billions of people with personal data due to their representations that they would keep its consumers' data safe.
- 82. Defendants have a fiduciary duty to keep this data safe, as once uploaded, the data is under their control and supervision, and Defendants are solely in a position to provide safety to the personal data.
- 83. Defendants, through Defendant and CEO Mark Zuckerberg, have acknowledged that Defendants have a duty to keep its consumer data safe.
- 84. Defendants nevertheless failed to provide adequate security.
- 85. In addition to a failure to provide security, Defendants knew they were allowing third party access to data on their servers, and still failed to provide adequate security, despite being aware of vulnerabilities.
- 86. Defendants lost Plaintiff's data while under their care and supervision, data which, to date has not been recovered.

87. As a result of Defendants' breach, Plaintiff was injured and damaged.

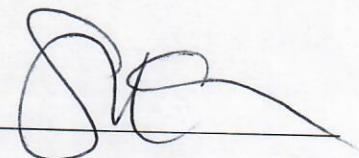
WHEREFORE, Plaintiff demands judgment jointly and severally against all Defendants including but not limited to FACEBOOK, INC. and MARK ZUCKERBERG and ABC 1-100 for:

- (a) compensatory damages;
- (b) punitive damages;
- (c) interest and costs;
- (d) attorney's fees;
- (e) such other relief as the Court may deem equitable and just.

**CERTIFICATION PURSUANT TO THE
CONSUMER FRAUD ACT, N.J.S.A. 56:8-1, ET. SEQ.**

I hereby certify that I had caused to be mailed a copy of this complaint to the Attorney General of the State of New Jersey pursuant to Consumer Fraud Act, N.J.S.A. 56:8-1, et. seq.

Dated:

By: 
STEPHANIE MCCLURE

DEMAND FOR DOCUMENTS AND EXPERT REPORTS PURSUANT TO RULE 4:18-1 and

Pursuant to R. 4:18-1 any party, without leave of court, may request or make demand for documents or objects, which may be served after commencement of an action, upon any party with or after service of the summons and complaint upon that party. Thereafter, said documents or requested documents must be produced within forty five (45) days, after service of said summons

and complaint is effectuated upon Defendants.

As such: Pursuant to the New Jersey Rules of Court, the Plaintiff hereby demands copies of:

(1) any contract, and/or terms and conditions in existence from 2004 through present between Plaintiff and Defendants; (2) a copy of any contracts or writings between Defendants and any other party with regard to the safety of data on the Facebook platform; (3) a copy of any correspondence between Plaintiff and Defendants with regard to this matter, including but not limited to the full data partially recovered during prior recovery attempts; (4) documents referred to within any answer provided or to be provided; (6) any indicia that Defendants intend to rely upon at court; (7) any tape recordings between Plaintiff and Defendants. Said demand is continuing in nature and subject to supplement.

Dated: July 6, 2018

By: _____


STEPHANIE MCCLURE

CERTIFICATION UNDER RULE 4:5-1

I hereby certify that the matter in controversy is not the subject of any other action pending in any court and is likewise not the subject of any pending arbitration proceeding. The matter had been the subject of a Complaint filed in the Supreme Court of the State of New York, County of New York, under Index number 101267-17, which was voluntarily discontinued (dismissed) by Plaintiff in order to file in the jurisdiction in which he resides (Hudson County New Jersey). I further certify that I have no knowledge of any contemplated action or arbitration regarding the subject matter in this action. There are no other parties that should be joined in this action.

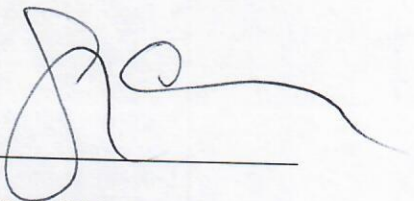
Dated: 07/25/2018

By: 
STEPHANIE MCCLURE

JURY DEMAND

Plaintiff demands a trial by jury in this matter.

Dated: 07/25/2018

By: 
STEPHANIE MCCLURE

Civil Case Information Statement

Case Details: HUDSON | Civil Part Docket# L-003079-18

Case Caption: KIDSTAR SAMUEL VS FACEBOOK, INC.

Case Initiation Date: 08/06/2018

Attorney Name: STEPHANIE MC CLURE

Firm Name: S. MCCLURE, LLP

Address: 101 6TH AVE 9TH FL

NEW YORK NY 10013

Phone:

Name of Party: PLAINTIFF : KIDSTAR, SAMUEL

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: COMPLEX COMMERCIAL

Document Type: Complaint with Jury Demand

Jury Demand: YES - 12 JURORS

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

08/06/2018

Dated

/s/ STEPHANIE MC CLURE

Signed